

AWARD

The Hon'ble Governor of Haryana in exercise of powers conferred,—vide Clause (C) of sub-section (10) of the Industrial Disputes Act, 1947 referred the following dispute to Presiding Officer Labour Court, Faridabad between Shri Raj Kumar workman and the management of Messrs Jai Forgings, Yamuna Nagar. The terms of the reference are as under:—

Whether the termination of services of Shri Raj Kumar was justified and in order? If not, to what relief is he entitled to?

On constitution of Labour Court at Ambala, this reference was received by transfer.

Shri Raj Kumar, workman through his demand notice which was treated statement of claim at the request of the workman alleged that he had been working in the concern of the respondent for the last 3 years and six months as inspection helper and used to draw wages Rs. 32 p.m. Shri M. K. Sharma production engineer gave him severe beating, on that account he filed a criminal complaint against him. Since then the management was in search of an opportunity to punish him. He remained on leave from 7th November, 1981 to 9th November, 1981 and thereafter reported for duty on 10th November, 1981 but he was not allowed to attend his work nor he was paid his wages for Oct., 1981, then he filed a complaint to the Labour Inspector on 20th November, 1981, ultimately he was told* that he remained absent from 7th November, 1981 to 18th November, 1981 on that excuse his services were terminated. He urged that this termination is arbitrary in violation of section 25 (F) of the Industrial Disputes Act, 1947 so he is entitled to re-instatement with continuity in service and with full back wages.

Respondent contested the case and contended that the workman remained absent for more than 10 days and thus according to standing orders of management his services were automatically terminated. It was contended that the allegations of workman are false and baseless. He has lost his lien by remaining absent more than 10 days. Retrenchment compensation and his dues were sent to him which he has received, so he does not deserve re-instatement with continuity in service with full back wages.

On pleadings of the parties, the following issues have been framed for the just decision of this case:—

Issues:—

1. Whether the workman has abandoned his job of his own account? If so, to what effect?
2. Whether the workman has taken his full and final account with the management? If so, to what effect?
3. As per reference?
4. Relief.

I have heard Shri Balbir Singh authorised representative of the workman and Shri S. Bindra for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:—

Issue No. 1 and 3:

Issue No. 1 and 3 are inter-linked so both are taken up together for discussion as well as for findings.

In a nutshell the case of the workman is that he proceeded on 3 days leave from 7th November, 1981 to 9th November, 1981 and reported on duty on 10th November, 1981. He was not allowed to join up to 2.00 P.M. nor he was paid wages for the month of Oct., 1981. Thereafter, he worked up to 18th November, 1981 and on that day he was told by the management verbally that his services have been terminated, on that score he made a complaint against the management with the Labour Inspector. The management was summoned but it did not join re-conciliation proceedings. Ultimately he received certain arrears from the management and this reference was made to this court by the Government for decision.

On the other hand it has come in the evidence of the management that workman absented on 7th November, 1981. Thereafter a letter was written to the workman on 23rd November, 1981 that he should report on duty and if he failed to report on duty within 48 hours in those circumstances his service shall be terminated. Copy of that letter is on the file which is Ex-M-1. The another registered notice copy of the same, is Ex-M-4 was returned on 1st December, 1981,—vide which the management has taken its defence that workman remained absent since 18th November, 1981 without any information/leave. So his services were terminated with immediate effect. In view of the above facts which have come in the evidence also and as per standing orders contained in Ex-M-3. For the worst let us draw the conclusion that the workman remained absent more than 10 days from his duty. As per standing orders, his services automatically came to an end but if the management was

bent upon to take that decision then it was duty bound to despatch one month pay in lieu of notice period and retrenchment compensation immediately but that was not done in the case in hand, the learned counsel for the management has drawn my attention towards 1984-Vol-II-LLJ-Page 77 it was held in terms of the standing orders the workman must be deemed to have left the service of the company and his employment thereby automatically terminated. It was no doubt open to the workman to seek conversion of his period of absence into leave without pay in terms of the Standing Orders but this should be done only if he offered an explanation for the absence to the satisfaction of the departmental head. No such explanation was ever offered or submitted by the workman. The Tribunal was clearly in error in holding that no explanation was required when the workman had been declared fit to join duty by his doctor. A certificate of fitness without any thing more cannot be said to amount to an explanation. It is now settled that certified standing orders have statutory force.

So in view of the above observation in the above judicial pronouncement of the Lordship has observed regarding the binding statutory force of standing orders.

I have the benefit of going through the another judicial pronouncement 1984-VII-XVII-Labour and Industrial Cases-Page 1651 titled *Dash Raj Sood & others versus Presiding Officer, Industrial Tribunal and others* a double bench judgement in which it was observed that services of an employee terminated automatically under the Standing Orders consequently loss of lien by the workman on conjunctive absence-termination falls within the meaning of section 2 (oo)—Provisions of section 25 (F) are attracted meaning thereby the case in hand when the respondent-management terminated the services of workman Shri Raj Kumar it must have despatched pay for one month towards notice period and retrenchment compensation as well as it should have informed the competent authority in form 'P' regarding the retrenchment of the Shri Raj Kumar. The retrenchment compensation and the remaining dues which were despatched by the management after a tremendous delay of about 2 months. A draft was despatched on 1st February, 1982 which was encashed on 15th March, 1982 as it is evident from Ex-M-5.

While law on this point is that even if compensation paid a day after the retrenchment the retrenchment is illegal and the workman is entitled to re-instatement such an observation finds place in 1984-Lab-I-O-NOC-168 Delhi in a case titled management of Messrs Kanti Weekly Petitioner. *versus D.D. Gupta and others*. In that case the retrenchment of the workman was ordered on 31st March, 1973 according to requirement of law the compensation ought to have been paid to him at that very time but a cheque regarding the payment of retrenchment compensation was delivered to the workman on 2nd April, 1973. It was observed that the tender or offer of compensation was illegal.

In view of my above discussions on facts and on law points I am of the considered view that the retrenchment of workman Shri Raj Kumar was ordered from 1st December, 1981 on the ground of absence from duty and the retrenchment compensation was despatched through bank draft on 1st February, 1982 it amounts that tender of compensation was illegal, hence the termination is also illegal and the workman Shri Raj Kumar entitled to re-instatement with continuity in service with full back wages minus the amount of dues already received by him. So both these issues are decided in favour of workman.

Issue No. 2:

From the evidence on the file it is not clear what were the total dues of the workman towards the management whether his claim stands satisfied regarding his claim on receipt of Rs. 1,598.55 P. so no clear cut findings can be given. It is a matter of calculation in consultation with the accounts of the parties, so it shall be settled by the parties on becoming the order of this court final towards the reliefs granted to workman.

Issue No. 4:

For the foregoing reasons my issue-wise findings I order the re-instatement of workman with continuity in service and with full back wages after adjusting the dues the workman already received from the management. I pass my award regarding the dispute in hand accordingly.

Dated the 4th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 2461, dated the 10th October, 1985

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.